

POLITICAL ACTIVITIES TRAINING MODULE 2002

Federal Employee Hatch Act
Election Offenses and Patronage Crimes
Appropriations Law Limitations
Anti-Lobbying Provisions
Federal Employees in Designated Localities
State and Local Employee Hatch Act

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POLITICAL ACTIVITIES CHECKLIST

' FEDERAL HATCH ACT

5 U.S.C. § 7321-7326

5 C.F.R. Part 734

● Active Participation in Partisan Political Management or Campaigns Permitted (Except for Career SES, ALJs, and PHS Commissioned Corps) While Off-Duty, Off-Premises, and Without Use of Government Title, Position, or Property; Subject to Four Basic Prohibitions:

NOTES:

1. No Candidacy for Partisan Elective Office
2. No Use of Official Title, Authority, or Appropriations for Partisan Political Purposes
3. No Solicitation, Acceptance, or Receipt of Campaign Contributions
4. No Active Participation in Political Events Targeted at Persons or Entities with Business before the Department

NOTE: Senate confirmed Presidential appointees (PAS) are exempted from the bar on political activities during duty hours and while on government premises, but the PAS remain fully subject to the basic prohibitions at all times.

' ELECTION OFFENSES AND PATRONAGE CRIMES

18 U.S.C. § 595, 600-603, 606-607, & 610

1. No Use of Official Authority to Affect Outcome of Nomination or Election
2. No Aggravated, Coercive Political “Shake-downs” to Obtain Support or Contributions, e.g., a Promise to Provide, or a Threat to Deprive, an Individual of Government Employment, Grants, Contracts, or Other Benefits
3. No Receipt or Solicitation of Political Contributions on Federal Property

NOTES:

' APPROPRIATIONS LAW LIMITATIONS

31 U.S.C. § 1301

● No Use of Appropriated Funds for Political Purposes, including Speech Writing and Travel

Factors to Determine Status of Events

- Source of Invitation • Sponsor or Planner
- Purpose • Timing • Location • Attendees

' ANTI-LOBBYING

18 U.S.C. § 1913

1. Anti-Lobbying Act, 18 U.S.C. § 1913

- No Use of Appropriated Funds > \$50,000 to Engage in Substantial “Grass Roots” Lobbying Campaign of Telegrams, Letters, and other Private Forms of Communication Expressly Asking Recipients to Contact Members of Congress, in Support of or in Opposition to Pending Legislation

- Permitted Activities

- Direct Communications to Congress • Public Speeches, Appearances, and Published Writings by Senate Confirmed Presidential Appointees (PAS) that Support Administration or Department Positions • Lobbying Efforts related to Nominations or Treaties

CAUTION: Although not specifically required by the Anti-Lobbying Act, federal employees other than PAS officials should not expressly urge citizens to contact Congress in support of or opposition to pending legislation.

2. Appropriations Acts -- “Publicity or Propaganda” Riders

- No Use of Appropriated Funds to:

- (1) Provide Administrative Support for the Lobbying Activities of Private Organizations;
- (2) Prepare Editorials or other Communications for Dissemination without an Accurate Disclosure of the Government Role in its Origin;
- (3) Appeal to Members of the Public to Contact their Elected Representatives at the Federal or State level in Support of or Opposition to proposals before Congress or a State Legislature

NOTE: Federal employees retain a constitutional right, as recognized by 5 U.S.C. § 7211, to petition Congress, provided the individuals act in a personal capacity or in a representative capacity on behalf of outside persons or organizations. The anti-representation statutes, 18 U.S.C. § § 203, 205, do not bar lobbying activities directed to Congress. The employee should provide a disclaimer which indicates that the views expressed are those of the employee or others and do not necessarily reflect the position of the individual's employing agency.

NOTES:

Title V, § 503, Departments of Labor, HHS, and Education Appropriations Act, 2002, Pub. L. 107-116, 115 Stat. 2177, 2217 (January 10, 2002)

Title VI, § 623, Treasury and General Government Appropriations Act, 2002, Pub. L. 107-67, 115 Stat. 514, 551 (November 12, 2001)

NOTES:

FEDERAL EMPLOYEES IN DESIGNATED LOCALITIES

5 U.S.C. § 7325
5 C.F.R. Part 733

Designated Localities—certain Washington, D.C., Suburbs (but not the District of Columbia itself) and Specified Communities in Seven Other States, AK, AZ, CA, GA, IN, TN, & WA

NOTES:

Maryland: *Annapolis, Anne Arundel County, Berwyn Heights, Bethesda, Bladensburg, Bowie, Brentwood, Calvert County, Capitol Heights, Cheverly, Chery Chase, Martin Additions 1, 2, 3, and 4, Chery Chase sections 1, 2, 3, and 4, Chery Chase View, College Park, Cottage City, District Heights, Edmonston, Fairmont Heights, Forest Heights, Frederick County, Garrett Park, Glenarden, Glen Echo, Greenbelt, Howard County, Hyattsville, Kensington, Landover Hills, Montgomery County, Morningside, Mount Ranier, New Carrollton, North Beach, North Brentwood, North Chery Chase, Northwest Park, Prince Georges County, Riverdale, Rockville, Seat Pleasant, Somerset, Takoma Park, University Park, Washington Grove, Saint Mary's County.*

Virginia: *Alexandria, Arlington County, Clifton, Fairfax County, Town of Fairfax, Falls Church, Herndon, Loudon County, Manassas, Manassas Park, Portsmouth, Prince William County, Vienna, Spotsylvania County, Stafford County.*

Other States: *Anchorage, AK; Benecia, CA; Bremerton, WA; Centerville, GA; Crane, IN; Elmer City, WA; Huachuca City, AZ; New Johnsonville, TN; Norris, TN; Port Orchard, WA; Sierra Vista, AZ; Warner Robins, GA.*

Resident Federal Employees:

- U MAY run as independent candidates for local partisan elective office, but outside these areas, federal employees may be candidates only in nonpartisan races;
- U MAY solicit, accept or receive political contributions or uncompensated volunteer services as, or on behalf of, an independent candidate for partisan political office in the designated locality;
- U MAY accept or receive political contributions on behalf of local candidates who represent political parties, but they may not solicit funds on their behalf.

CAUTION: These employees remain subject to the "time, place, and manner" restrictions governing other federal employees, i.e., political activities must occur off-duty, off-premises, and without an indication of a governmental connection. In addition, candidacy for office cannot result in neglect of, or interference with, the performance of an employee's duties or create a real or apparent conflict of interest.

' STATE AND LOCAL HATCH ACT

5 U.S.C. § § 1501-1508
5 C.F.R. Part 151

State and Local Government Employees in Executive
Branch Agencies Principally Employed in Programs
Financed by Federal Grants or Loans

Head Start Agency Employees
Community Service Block Grant Employees

Subject to the Following Prohibitions:

1. No Candidacy for Partisan Elective Office
2. No Use of Official Authority or Influence To
Affect Outcome of Nomination or Election
3. No Coercion of Campaign Contributions from
Subordinates

Permitted Activities

- U MAY be a candidate for public office only in a
nonpartisan race;
- U MAY campaign for and hold elective office in
political clubs and organizations;
- U MAY actively campaign for candidates for public
office in both partisan and nonpartisan elections;
- U MAY contribute money to political organizations
or attend political fundraising functions;
- U MAY participate in any activity not specifically
prohibited by law or regulation.

CAUTION: State and local government employees may be subject to additional
restrictions on political activity under State law.

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See also the Hatch Act flyer available from the US
Office of the Special Counsel, at
<http://www.osc.gov/documents/info/haflyer.htm>

April 2002

CRIMINAL STATUTES

All federal employees, regardless of position, pay, duty, or leave status, are subject to criminal prosecution for the conduct summarized in the following statutes:

18 U.S.C. 595 Interference by Administrative Employees of Governments

No administrative employee at the federal, state, or local levels of government, in connection with federally financed activities, may use official authority for the purpose of interfering with, or affecting, the nomination or election of any candidate for federal office.

18 U.S.C. 600 Promise of Employment or Other Benefit for Political Activity

No one can directly or indirectly promise employment, a raise in pay, a contract, a grant, or other government benefit as an enticement to, or reward for, political activity to be rendered in the future, in connection with any election, convention, or caucus.

18 U.S.C. 601 Deprivation of Employment or Other Benefit for Political Contribution

Political contributions of money or services cannot be coerced by directly or indirectly threatening the denial or deprivation of any employment, payments, or benefits made possible under any federal program.

18 U.S.C. 602 Solicitation of Political Contributions

Congressional candidates and incumbents cannot knowingly solicit political contributions from any federal officer or employee or from any contractor who renders personal services. Federal officers and employees similarly may not solicit political contributions from any contractor who renders personal services. Federal officers and employees in turn may not solicit political contributions from each other to the extent that the solicitation is prohibited by the Hatch Act. (Non-subordinate federal employee union members may be solicited outside the workplace on behalf of the union political action committee).

18 U.S.C. 603 Making Political Contributions

Political contributions to any federal officer who is the "employer or employing authority" of the contributor are prohibited. (For executive branch employees other than members of the uniformed services, this provision no longer applies. Public Health Service Commissioned Corps officers remain subject to the ban which may preclude making contributions to the re-election campaign committee of an incumbent President.)

18 U.S.C. 606 Intimidation to Secure Political Contributions

No federal officer or employee may promote, discharge, or in any manner change the rank or compensation of any other officer or employee, or promise or threaten to do so, for giving or failing to give any contribution of money or item of value for any political purpose.

18 U.S.C. 607 Place of Solicitation

No person may receive or solicit any political contribution in any room or building occupied in the discharge of official duties by federal officers, employees, or contractors who render personal services.

18 U.S.C. 610 Coercion of Political Activity

No person may command or coerce, or attempt to intimidate, a federal employee to engage in, or not to engage in, any political activity, including voting, making political contributions, or working on behalf of any candidate.

GAO Redbook, Page 4-178

Chapter 4
Availability of Appropriations: Purpose

Generally speaking, funds appropriated to carry out a particular program would not be available for political purposes, i.e., for a propaganda effort designed to aid a political party or candidate. See B-147578, November 8, 1962. If for no other reason, such an expenditure would be improper as a use of funds for other than their intended purpose in violation of 31 U.S.C. § 1301(a). However, the publicity and propaganda statute does not provide adequate guidelines to distinguish between legitimate and purely political activities and is therefore applicable to “political” activities only to the extent that the activities would otherwise constitute a violation. See B-130961, October 26, 1972.

In more general terms, it is always difficult to find that conduct is so purely political as to constitute a purpose violation. As stated in B-144323, November 4, 1960:

“[The question is] whether in any particular case a speech or a release by a cabinet officer can be said to be so completely devoid of any connection with official functions or so political in nature that it is not in furtherance of the purposes for which Government funds were appropriated, thereby making the use of such funds ... unauthorized. This is extremely difficult to determine in most cases as the lines separating the nonpolitical from the political cannot be precisely drawn.

FACTORS TO DETERMINE WHETHER AN EVENT IS POLITICAL

Activities that involve (i) the solicitation, making or acceptance of contributions to a candidate's campaign, or (ii) communications expressly advocating the nomination, election or defeat of any candidate are deemed political and campaign-related. *See* Federal Election Commission (FEC) Advisory Opinions 1994-15, 1992-6, 1988-27 and opinions cited therein. The public funding regulations for presidential candidates also rely upon these factors in determining if travel is campaign-related. 11 CFR 9004.7(b)(2) and 9034.7(b)(2). The Commission has indicated that the absence of solicitations for contributions or express advocacy regarding candidates will not preclude a determination that an activity is "campaign-related." FEC Advisory Opinions 1994-15, 1992-37, 1992-6, 1988-27 and opinions cited therein. Similarly, Commission public funding regulations state that, "[o]ther factors, including the setting, timing and statements or expressions of the purpose of an event, and the substance of the remarks or speech made, will also be considered in determining whether a stop is campaign-related." 11 CFR 9004.7(b)(2) and 9034.7(b)(2).

The FEC has stated that any reference to a candidate's campaign, or to the campaign or qualifications of another candidate, either during the speech or during any question and answer period (held just before or after the speech) will change the character of the appearance to one that is for the purpose of influencing a Federal election. The Commission particularly has stressed the significance of a question and answer period in circumstances where the individual appears just prior to the primary or election, and such questions and answers are a very foreseeable development. The following factors should be evaluated in each case.

- Source of Invitation/Planner of Event
 - RNC
 - Republican Senatorial Campaign Committee
 - Republican Congressional Campaign Committee
 - Individual Candidate's Campaign Committee
 - PAC
 - Advocacy Organization
 - Individual Candidate
- Purpose of Event
 - Raise Funds
 - Raise Support
 - Bona Fide Issues Forum
- Location
 - Key Congressional District
 - State with close Senate Race
- Attendees
 - Candidate
 - Contributors
 - Bipartisan Audience
 - Program Stakeholders
- Timing
 - Presumptive Campaign Season (Labor Day)
 - "Warm-Up" for Candidate
 - "Rebuttal or Response" to Opposition Candidate
- Presumption Rebuttal Factors:
 - Attended before in non-election setting
 - Annual recurring/event
 - Scheduled long ago
 - Subject matter and audience clearly official

Clinton Listens to Legal Advisers, Cancels Plans to Christen Warship

Associated Press

BAL HARBOUR, FLA., Sept. 5—President Clinton canceled plans to christen America's newest aircraft carrier after White House and campaign lawyers warned it would be considered a political event, spokesman Michael McCurry said today.

Clinton had intended to travel to Newport News, Va., on Saturday for the christening of the new warship, the USS Harry S. Truman. "The assumption was that the commander in chief could christen one of his own boats," McCurry said.

But the lawyers advised against it, citing both the law and precedents established by the Federal Election Commission, McCurry said. The

christening would have been ruled a political event had Clinton attended, which would have created an awkward situation for the Navy admirals and other officers who planned to attend.

Instead, Secretary of the Navy John H. Dalton will preside over the event and read the statement Clinton had intended to deliver.

McCurry said the office of the White House counsel and lawyers representing the Clinton-Gore campaign advised that, under the law, everything a president does between his nomination and election day is considered political, with two exceptions: travel and events connected to national security or natural disasters.

POLITICAL ACTIVITY LIMITATIONS FOR SUPPORT STAFF OF SENIOR ADMINISTRATION OFFICIALS

The "Hatched" support staff of a senior Administration official may perform their normal clerical and ministerial functions in connection with the political travel and appearances or activities of their principal provided that the functions they perform are related to their official responsibilities. These employees, however, may not perform tasks that are purely political in nature or which relate solely to their principal's political activities. Hence, a "Hatched" employee may make the logistical arrangements for his or her principal's political travel or appearances, but the employee may not write a purely partisan speech for his or her principal or engage in any of the "management" activities of a political event or work on the activities of a committee, such as the Platform or Rules Committees of a political convention.

Additionally, the Office of Special Counsel has taken the position that "Hatched" employees may write briefing materials on official Administration activities for use by Administration officials, even when such materials will be included in partisan political statements. However, employees covered by the Hatch Act may not write or prepare any materials that will be used solely for a political purpose (e.g., materials for the platform of the [party] or an analysis of an opponent's economic plan), nor may they prepare any materials containing statements of political advocacy.

U.S. Department of Justice
Office of Legal Counsel

Washington, D.C. 20530

April 14, 1995

GUIDELINES ON 18 U.S.C. § 1913

The Anti-Lobbying Act, 18 U.S.C. § 1913, prohibits officers and employees of the executive branch from engaging in certain forms of lobbying. If applied according to its literal terms, section 1913 would have extraordinary breadth, and it has long been recognized that the statute, if so applied, might be unconstitutional. The Office of Legal Counsel has interpreted that statute in light of its underlying purpose “to restrict the use of appropriated funds for large-scale, high-expenditure campaigns specifically urging private recipients to contact Members of Congress about pending legislative matters on behalf of an Administration position.” Memorandum for Dick Thornburgh, Attorney General, from William P. Barr, Assistant Attorney General, Office of Legal Counsel, “Constraints Imposed by 18 U.S.C. § 1913 on Lobbying Efforts,” 13 Op. O.L.C. 361,365 (1989) (prelim. print) (citation and footnote omitted) (“1989 Barr Opinion”). Although there has never been a criminal prosecution under the Act since its adoption in 1919, the Criminal Division and its Public Integrity Section have frequently construed the Act in the context of particular referrals. The principles that the Criminal Division has developed over time provide guidance to the meaning of the statute that is necessary in order for the Act to provide reasonably ascertainable guidance to those to whom it applies.

Section A below describes officials whose lobbying activities are not inhibited by the Anti-Lobbying Act. Section B describes the kind of lobbying permitted under the Act. Section C describes the kind of lobbying prohibited by the Act. Section D describes a further restriction that agencies may wish to observe, although they are not required to do so under the Act. Section E describes additional prohibitions imposed by typical “publicity or propaganda” riders, as interpreted by the Comptroller General, although identifying the precise restrictions, if any, applicable to any particular agency requires an examination of that agency’s appropriations act.

A. The Department of Justice consistently has construed the Anti-Lobbying Act as not limiting the lobbying activities personally undertaken by the President, his aides and assistants within the Executive Office of the President, the Vice President, cabinet members within their areas of responsibility, and other Senate-confirmed officials appointed by the President within their areas of responsibility.

B. Under the Anti-Lobbying Act, government employees MAY:

- communicate directly with Members of Congress and their staffs in support of Administration or department positions. The Act does not apply to such direct communications.
- communicate with the public through public speeches, appearances and published writings to support Administration positions – including using such public fora to call on the public to contact Members of Congress in support of or opposition to legislation.

- communicate privately with members of the public to inform them of Administration positions and to promote those positions – but only to the extent that such communications do not contravene the limitations listed in Section C below.
- lobby Congress or the public (without any restriction imposed by the Anti-Lobbying Act) to support Administration positions on nominations, treaties, or any non-legislative, non-appropriations issue. The Act applies only to lobbying with respect to legislation or appropriations.

C. Under the Anti-Lobbying Act, government employees MAY NOT:

- engage in substantial “grass roots” lobbying campaigns of telegrams, letters, and other private forms of communication expressly asking recipients to contact Members of Congress, in support of or opposition to legislation. Grass roots lobbying does not include communication with the public through public speeches, appearances, or writings. Although the 1989 Barr Opinion does not define the meaning of “substantial” grass roots campaigns, the opinion notes that the 1919 legislative history cites an expenditure of \$7500 – roughly equivalent of \$50,000 in 1989 – for a campaign of letter-writing urging recipients to contact Congress.

D. Although not required by the Anti-Lobbying Act, agencies may wish to observe a more general restriction with respect to officials other than those listed in Section A:

- against expressly urging citizens to contact Congress in support of or opposition to legislation. As Sections B and C taken together indicate, the Anti-Lobbying Act does not forbid government employees from urging citizens to contact Members of Congress on behalf of an Administration position, except in the context of a grass roots campaign. Nevertheless, the Comptroller General, following his understanding of the Department of Justice’s historical interpretation of the Act before the 1989 Barr Opinion, has construed the restriction as being triggered by explicit requests for citizens to contact their representatives in support of or opposition to legislation. Given the Comptroller General’s interpretation, and given the difficulty of predicting what may be perceived as a grass roots campaign in a particular context, agencies may wish to err on the side of caution, by refraining from including in their communications with private citizens any requests to contact Members of Congress in support of or opposition to Legislation.

E. The Office of Legal Counsel’s published opinions to not set out a detailed, independent analysis of “publicity or propaganda” riders contained in the appropriations acts of some agencies. The Comptroller General has suggested that, under such riders, government employees also MAY NOT (1) provide administrative support for the lobbying activities of private organizations, (2) prepare editorials or other communications that will be disseminated without an accurate disclosure of the government’s role in their origin, and (3) appeal to members of the public to contact their elected representatives in support of or opposition to proposals before Congress.

2002 Anti-Lobbying Appropriations Riders

Title V, § 503, Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2002, Pub. L. 107-116, 115 Stat. 2177, 2217 (January 10, 2002)

Sec. 503. (a) No part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress or any State legislature, except in presentation to the Congress or any State legislature itself. (b) No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

Title VI, § 623, Treasury and General Government Appropriations Act, 2002, Pub. L. 107-67, 115 Stat. 514, 551 (November 12, 2001)

Sec. 623. No part of any funds appropriated in this or any other Act shall be used by an agency of the executive branch, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, and for the preparation, distribution or use of any kit, pamphlet, booklet, publication, radio, television or film presentation designed to support or defeat legislation pending before the Congress, except in presentation to the Congress itself.

See also the flyer from the US Office of Special Concerns

<http://www.osc.gov/documents/info/haflyer2.htm>

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